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REAL PROPERTY — VOLUNTARY PARTITION — WHETHER LIFE TENANTS CAN BIND REMAINDERMEN.—Land was conveyed to five persons during their natural lives as tenants in common, with remainder in fee simple to their heirs, who were to take *per stirpes*. The life tenants entered into a fair and equal voluntary partition. After the death of one of the life tenants his heir sued in ejectment for an undivided fifth of the grantor's property. *Held*, that the partition is binding upon the plaintiff. *Acord v. Beaty*, 148 S. W. 901 (Mo.).

It is a general rule that co-tenants cannot by a partition prejudice the rights of others having independent estates who are not parties to the partition. See *Cole v. Aylott*, Litt. Rep. 299, 300; *ALLNAT, LAW OF PARTITION*, 63. It would seem to follow that a partition by life tenants or tenants in tail would not be binding upon remaindermen who are not *in esse* at the time of the partition. *Buxton v. Bowen*, 2 Woodb. & M. 365; *Buxton v. Inhabitants of Uxbridge*, 10 Metc. (Mass.) 87. But in the early English law a fair and equal voluntary partition between parcelers in tail would bind the issue in tail forever. See *COKE ON LITTLETON*, 166 a; *Thomas v. Gyles*, 2 Vern. Ch. 232. By reason of the difference in the nature of their estate, it does not necessarily follow that a life tenant can make a permanent partition. But where the co-tenants for life seek division by means of judicial proceedings and not by voluntary partition, it has been often held that remaindermen are bound who are not in court nor even *in esse*. *Gaskell v. Gaskell*, 6 Sim. 643. See *Mead v. Mitchell*, 17 N. Y. 210, 214; *Wills v. Slade*, 6 Vesey 498. This is based upon the equity doctrine of virtual representation, the theory being that the interests of the remaindermen are effectively protected by the parties to the action in whom the present estate is vested. See *Faulkner v. Davis*, 18 Gratt. (Va.) 651, 684 *et seq.*; *STORY, EQUITY PLEADINGS*, 10 ed. § 145. There seems little reason or expediency in holding that life tenants may not by a fair voluntary partition accomplish that which they could readily attain by an action in court. See *Crowley v. Blackman*, 81 Ga. 775, 777, 8 S. E. 533. Considerations of public policy would also seem to support a partition that cannot be upset at the death of each life tenant.

RESTRAINT OF TRADE — SHERMAN ANTI-TRUST ACT — MONOPOLY IN PATENTED ARTICLES.—A patentee licensed eighty-five per cent of the manufacturers of sanitary enameled iron ware to use certain patents in the manufacture of such ware, in return for their agreements to resell their product at fixed prices, and only to those jobbers who agreed to handle the goods of licensed manufacturers exclusively and to maintain non-competitive prices. There was also a provision for rebates in favor of the manufacturers and jobbers so long as they adhered to their agreements. *Held*, that the arrangement constitutes a combination in restraint of trade in violation of the Sherman Anti-Trust Act. *Standard Sanitary Manufacturing Co. v. United States*, U. S. Sup. Ct., Nov. 18, 1912.

For a discussion of the decision in the lower court, see 25 HARV. L. REV. 454. As to the control of a patentee over unpatented articles, see 25 HARV. L. REV. 641.

RIGHT OF PRIVACY — NATURE AND EXTENT OF RIGHT.—The plaintiff employed the defendant to make only a certain number of photographs of the dead bodies of his twin sons, who were born curiously joined together at the shoulders. The defendant without the plaintiff's knowledge or consent made more photographs, filed a copy at the United States copyright office and secured a copyright. *Held*, that the plaintiff may recover damages. *Douglas v. Stokes*, 149 S. W. 849 (Ky.).

In the principal case there seems to be a breach of the express contract by

the photographer. But the court does not so deal with the case, and even apart from such a contract the plaintiff should recover. The earlier cases argued that there was a breach of an implied contract and of a fiduciary relation between the photographer and customer. *Pollard v. Photographic Co.*, 40 Ch. D. 345; *Moore v. Rugg*, 44 Minn. 28, 46 N. W. 141. The relation between a person and his photographer hardly seems of so close and personal a nature as to give rise to fiduciary obligations. In most cases it is reasonable to imply a contract that the photographer shall make no use of the picture. But justice would require a recovery not only where the photograph copyrighted or published is taken by a photographer under agreement but where it is surreptitiously snapped by a stranger. And many courts allow recovery in tort for an interference with the plaintiff's right of privacy. *Pavesich v. New England Life Insurance Co.*, 122 Ga. 190, 50 S. E. 68; *Foster-Milburn Co. v. Chinn*, 134 Ky. 424, 120 S. W. 364. Wherever this right has been recognized it would seem to cover such a situation as that in the principal case, and allow recovery in tort as well as in contract.

STATUTE OF FRAUDS — SUFFICIENT MEMORANDUM — UNDELIVERED DEED NOT RECITING THE PAROL CONTRACT. — The defendant, in accordance with the terms of a parol contract, prepared and signed a deed conveying certain land to the plaintiff, but retained the deed in his possession. The deed contained no recital of the parol contract. *Held*, that the deed does not constitute a sufficient memorandum to satisfy the Statute of Frauds. *Lowther v. Potter*, 197 Fed. 196 (Dist. Ct., E. D. Ky.).

The American cases are almost equally divided as to whether delivery of the written memorandum is necessary to satisfy the Statute of Frauds. *Magee v. Blankenship*, 95 N. C. 563; *Johnson v. Brook*, 31 Miss. 17. The more recent cases tend toward the view that the requirements of the statute are fulfilled without delivery. *Johnston v. Jones*, 85 Ala. 286, 4 So. 748. See *Ames v. Ames*, 46 Ind. App. 597, 91 N. E. 509. *Contra*, *Wilson v. Winters*, 108 Tenn. 398, 67 S. W. 800. The reasoning is that the real object of the statute is to prevent fraud by the fabrication of oral evidence against the defendant, and that all possibility of such fraud is eliminated when the defendant himself retains possession of the memorandum. *Drury v. Young*, 58 Md. 546. This reasoning seems sound. It follows that an undelivered deed, if it can properly be called a memorandum, is sufficient to satisfy the statute. See *Jenkins v. Harrison*, 66 Ala. 345, 358, 359. But the statute requires a memorandum of the contract; hence a deed containing no recital of the parol contract does not come within the terms of the statute. *Kopp v. Reiter*, 146 Ill. 437, 34 N. E. 942. *Contra*, *Parrill v. McKinley*, 9 Gratt. (Va.) 1. It may be argued that it is fair to imply a parol contract from the existence of the deed. But this is not a necessary inference. Nor can an undelivered deed be itself construed as a contract to convey, as might be possible in the case of the delivery of an invalid deed.

TAXATION — PROPERTY SUBJECT TO TAXATION — PROPERTY RECEIVED IN LIEU OF DOWER. — The widow of a testator elected to take real estate devised by will in lieu of dower. Under a statute taxing "All property . . . which shall pass by will or by the intestate laws," she claimed exemption for an amount equal to her dower interest. *Held*, that an amount equal to her dower interest is not subject to the tax. *In re Sanford's Estate*, 137 N. W. 864 (modifying former opinion in same case, 90 Neb. 410, 133 N. W. 870).

It is generally held that dower does not pass by will or the intestate laws and is therefore not subject to an inheritance tax. *In re Weiler's Estate*, 122 N. Y. Supp. 608; *Crenshaw v. Moore*, 124 Tenn. 528, 137 S. W. 924. See 25 HARV. L. REV. 181. *Contra*, *Billings v. People*, 189 Ill. 472, 59 N. E. 798. The same is true with respect to curtesy. *In re Starbuck's Estate*, 63 N. Y. Misc. 156,